

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

APR 15 2008

COURT OF APPEALS
DIVISION TWO

STANLEY GENE ESSARY,

Petitioner/Appellant,

v.

STATE OF ARIZONA,

Respondent/Appellee.

2 CA-HC 2007-0003
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. FW20070137

Honorable Roger Duncan, Hearing Officer

AFFIRMED

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery

Tucson
Attorney for Petitioner/Appellant

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent/Appellee

E S P I N O S A, Judge.

¶1 In this appeal from the trial court's order denying appellant Stanley Essary's petition for writ of habeas corpus, Essary contends the state failed to comply with the requirements of A.R.S. § 13-3845(B) sufficiently to justify his extradition to the State of Colorado. We will not disturb the trial court's decision whether to issue a writ of habeas

corpus absent an abuse of discretion. *State v. Cowles*, 207 Ariz. 8, ¶ 3, 82 P.3d 369, 370 (App. 2004).

¶2 Essary was arrested in Arizona on March 28, 2007, pursuant to a warrant that had been initiated in Colorado. On June 4, 2007, the governor of this state issued a Governor’s Warrant on Extradition, stating Essary had been charged in Colorado with four counts of sexual assault on a child and two counts of aggravated incest. Seeking to avoid extradition, Essary filed a petition for writ of habeas corpus, arguing the requirements of § 13-3845(B) had not been established because his identity had not been adequately proved.

¶3 Section 13-3845(B) provides, in relevant part, that:

a warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand include:

1. A photograph and photo affidavit identifying the accused as the fugitive charged with the offense; or
2. Fingerprints certified by the issuing authority that can be used to identify the accused as the fugitive charged with the offense.

¶4 Essary contends the documents submitted to establish his identity were insufficient because the fingerprint card was not certified. He asserts that the photograph used to identify him and the attendant affidavit were insufficient, suggesting there was no connection established between him and the person in the photographs; he argues “the relevant portion [of the affidavit] states only that the fingerprints and photographs are of someone with a particular name and date of birth, not that they are of the fugitive wanted in Colorado for the specified offenses.” In particular, Essary argues that the affidavit is

insufficient because “the affiant has sworn to nothing more than that the person in the photograph has a particular name and date of birth.”

¶5 The documentation submitted adequately established Essary was the person charged with having committed the Colorado offenses. The assistant district attorney stated in her affidavit that the photograph and the fingerprints were Essary’s and that she had received them after requesting them from the sheriff. The person who sent them in response to her request thereby represented they were connected to Essary. The trial court had the opportunity to review these documents, and we cannot say the court erred when it found a sufficient connection had been established between Essary and the person identified as the Colorado fugitive represented in the photograph, whose fingerprints were obtained and sent to Arizona.

¶6 Because there was sufficient evidence to support the court’s conclusion that the fingerprints and photographs adequately identified Essary as the person sought, the court did not abuse its discretion when it declined to issue a writ of habeas corpus. Therefore, we affirm the court’s order denying Essary’s petition for writ of habeas corpus.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge